

**COMPLIANCE AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF THE NAVY**  
**AND**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**PARTIES**

1. The United States Environmental Protection Agency ("EPA") and the United States Department of the Navy ("Navy") are parties to this Compliance Agreement ("Agreement") regarding the loan by the Navy of the sail and the Conning Tower of the ex-USS TRITON (SSN 586) to the Port of Benton, Washington (Port of Benton) for use as a static museum with intermittent tours.

**PURPOSE**

2. This Agreement sets forth the conditions under which the EPA would refrain from instituting an enforcement action against the Navy under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et. seq., with respect to the distribution in commerce of the Conning Tower of the ex-USS TRITON by the Navy, a component known to contain polychlorinated biphenyls ("PCBs") in regulated concentrations.

**APPLICABILITY**

3. This Agreement identifies the steps the Navy shall take regarding the distribution in commerce of the Conning Tower of the ex-USS TRITON to the Port of Benton in light of the presence of PCBs in the Conning Tower.
4. If the Navy abides by the terms of this Agreement, the EPA agrees not to institute an enforcement action against the Navy for violation of the PCB requirements under the TSCA and the PCB regulations at 40 C.F.R. Part 761 in loaning the ex-USS TRITON Conning Tower to the Port of Benton.
5. This Agreement pertains solely to the distribution in commerce by the Navy of the ex-USS TRITON Conning Tower and does not bind either party with regard to TSCA compliance in any other matter.
6. A separate EPA/Port of Benton agreement addresses the requirements which the Port of Benton must satisfy to reduce the potential risks to human health or the environment that may be associated with the continued presence of

PCBs in the Conning Tower of the ex-USS TRITON. That agreement provides that if those requirements are met, the EPA will refrain from instituting an enforcement action under TSCA for the Port of Benton's continued use of PCBs in regulated concentrations on the Conning Tower of the ex-USS TRITON.

### **DEFINITIONS**

7. Terms used in this Agreement shall have the meaning set forth in Section 3 of TSCA, 15 U.S.C. § 2602, or in 40 C.F.R. Part 761. If a term is not defined in Section 3 of TSCA, or in 40 C.F.R. Part 761, such term shall have its ordinary meaning.

### **STATEMENT OF FACTS**

8. Under 10 U.S.C. § 2572, the Navy is authorized to loan vessels or portions thereof to State and local governments and non-profit organizations. Pursuant to this statutory authority, the Navy proposes to loan the Conning Tower and sail of the ex-USS TRITON to the Port of Benton for use as a static museum. Sampling of the sail found cables with PCBs at or above 50 ppm. The Navy asserts that all these cables were removed, so that no PCBs at or above 50 ppm are believed to remain in the sail. Accordingly, this agreement pertains only to the loan of the Conning Tower.

9. Materials containing PCBs are present at or above 50 ppm on the Conning Tower of the ex-USS TRITON. Electrical cables may contain solid PCBs at or above 50 ppm in the insulation. The cables are connected and sealed. The results of the Navy's 2008 PCB survey of the ex-USS TRITON Conning Tower show that habitability paint and primer sampled from portions of the bulkhead and from a cabinet contain PCBs at 86 ppm. Prior to the ban on PCBs, manufacturers included PCBs in paints for vessels to take advantage of their plasticizing properties. The presence of PCBs is not believed to be a result of a spill of liquid PCBs. The PCBs appear bound in the matrix of the paint. The Navy provided the EPA and the Port of Benton with written notification of these sample results, indicating that any habitability paint or primer on the bulkhead or cabinetry could contain PCBs. As a result, the EPA and Port of Benton have entered into an agreement authorizing the use of the ex-USS TRITON Conning Tower as a static museum with associated practices to prevent exposure to or the release of PCBs to the environment.

10. Subject to certain exceptions established by EPA regulation, the distribution of PCBs in commerce is prohibited under TSCA and 40 C.F.R. Part 761. This Agreement is entered into in order to facilitate the Navy's loan of the Conning Tower to the Port of Benton, consistent with the Purpose of this Agreement set forth above.

## **REQUIREMENTS**

11. The Navy proposes to loan the ex-USS TRITON Conning Tower as a static museum under Loan Agreement No. 2009-71-2 USS TRITON (SSRN-586) Conning Tower ("Loan Agreement"). The Loan Agreement is the sole legal document evidencing the loan of the ex-USS TRITON Conning Tower.
12. The Loan Agreement shall require the Port of Benton to maintain the ex-USS TRITON Conning Tower in a condition satisfactory to the Navy, including management of the Conning Tower in accordance with the requirements as established by the agreement between the EPA and the Port of Benton. The Loan Agreement shall require prior approval from the Navy before transferring the ex-USS TRITON Conning Tower to any other party. The Navy shall promptly notify the EPA if such request is received from the Port of Benton. The Loan Agreement shall provide that the Navy may terminate the Loan Agreement if the Port of Benton fails to perform the obligations assumed under the Loan Agreement, including obligations under the agreement between the EPA and the Port of Benton regarding the continued use of PCBs.
13. Nothing in this Agreement relieves the Port of Benton, the Navy, or any other party from the responsibility of disposing PCBs from the ex-USS TRITON Conning Tower in accordance with 40 C.F.R. Part 761. In the event the Port breaches its compliance agreement with EPA, the Navy and EPA shall provide written notification to the Port of such breach as soon as practicable, but in no event later than five business days after the discovery of such breach. If such breach is not cured by the Port after a reasonable period of time specified by EPA ("Cure Period"), then the Navy shall, within 30 days of the expiration of such "Cure Period," and after consultation with EPA, ensure that all PCBs on the ex-TRITON Conning Tower are managed or disposed of pursuant to 40 C.F.R. Part 761 or initiate best efforts to reassume possession of the Conning Tower. The Navy shall continue to exercise such efforts until reassumption of the Conning Tower is completed or the Navy provides evidence that all PCBs within the Conning Tower are otherwise properly managed or disposed.
14. Nothing in this Agreement addresses the EPA's potential enforcement response for the Port of Benton's violation of TSCA or any other law.

## **ENFORCEABILITY**

15. In the event of a material breach by the Navy of any term or condition of this Agreement, the EPA shall notify the Navy and afford the Navy a reasonable opportunity under the circumstances to correct the problem. If the EPA considers the material breach to remain, then the EPA may terminate this Agreement by written notice to the Navy. The EPA may then take appropriate enforcement action for any violations of TSCA.

### **TERMINATION**

16. In addition to termination pursuant to the preceding paragraph, this Agreement shall terminate upon Navy's cancellation of the Loan Agreement for the Conning Tower of the ex-USS TRITON, or as otherwise agreed in writing by both the Navy and EPA.

### **CONTACTS**

17. The Navy's point of contact for notifications relating to this Agreement shall be the Undersea Warfare Directorate, NAVSEA 07 PMS 392, 614 Sicard Street, SE, Washington Navy Yard, Washington D.C. 20376. A member of this office can be reached at (202) 781-1295.

18. The EPA's point of contact for notifications relating to this Agreement shall be the Director, Office of Compliance and Enforcement, U.S. EPA Region 10. Related correspondence shall be directed to U.S. EPA Region 10, 1200 Sixth Ave., Suite 900, Seattle, Washington 98101.

### **EFFECTIVE DATE**

19. This Agreement shall become effective upon execution by authorized representatives of the EPA and the Navy provided that the EPA and the Port of Benton have executed an Agreement addressing the management of PCBs on the Conning Tower of the ex-USS TRITON.

20. If this Agreement is signed prior to the EPA/Port of Benton agreement, it shall not become effective until the EPA/Port of Benton Agreement is effective.

21. If the EPA/Port of Benton agreement is effective prior to execution of this Agreement, this Agreement shall become effective upon the date on which the last party affixes its signature to this Agreement.

U.S. NAVY:

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M. R. WHITNEY  
Captain, U.S. Navy  
Commander,  
Puget Sound Naval Shipyard & Intermediate Maintenance Facility

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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Michelle Pirzadeh  
Acting Regional Administrator  
U.S. EPA Region 10




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Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. EPA

21. If the EPA/Port of Benton agreement is effective prior to execution of this Agreement, this Agreement shall become effective upon the date on which the last party affixes its signature to this Agreement.

U.S. NAVY:

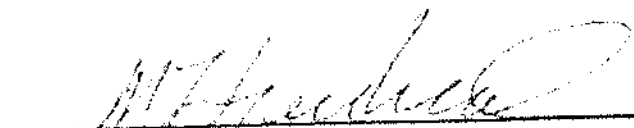
  
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M. R. WHITNEY  
Captain, U.S. Navy  
Commander,  
Puget Sound Naval Shipyard & Intermediate Maintenance Facility

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

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Michelle Pirzadeh  
Acting Regional Administrator  
U.S. EPA Region 10

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Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
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Ex-USS TRITON CONNING TOWER  
TSCA COMPLIANCE AGREEMENT  
U.S. NAVY - U.S. EPA